

21 April 1997

Re: NEPA Call-In Technical Inquiry 0067 - Discharge into Headwaters

Dear NEPA Call-In User:

This letter is in response to your April 3, 1997 request for clarification of a letter you received from the Albuquerque District, U.S Army Corps of Engineers (ACE). You received a letter from the ACE referencing the GSA proposed construction of a National Park Service building in a city in New Mexico. The letter stated the proposed construction, including all four sites under your consideration, may include a discharge into headwaters which requires a Nationwide Permit pursuant to Section 404 of the Clean Water Act (CWA). Specifically, you would like to know what you are required to do. You also questioned the need for a permit as there does not seem to be any water in the area where the construction is proposed. In fact, you stated the entire area seems to be very arid.

#### SUMMARY OF FINDINGS

NEPA Call-In found you will need a Nationwide Permit for your construction project if the ACE determines there will be a discharge into headwaters. NEPA Call-In's findings are outlined below.

#### DETAILED FINDINGS

We contacted Ms. Denise Smith, Project Manager, U.S. Army, Corps of Engineers, Albuquerque District, (505) 342-3279. Ms. Smith stated there are arroyos (intermittent stream beds) present on or near each of the four proposed construction sites. These arroyos may be affected by the construction, and are covered under the definition of headwaters in Title 33 Code of Federal Regulations (CFR) 330.2, "Definitions" (enclosed). Therefore, your construction project may involve discharge into headwaters and require a Nationwide Permit pursuant to Section 404 of the CWA. Section 404 seeks to ensure our nation's waters are protected from irresponsible and/or unregulated discharges of dredged or fill material. Ms. Smith stated there are 30 different Nationwide Permits, and the specific type of permit needed, if any, will depend on the location of the construction in relation to the arroyo. Ms. Smith stated her office can determine the type of permit needed based on plans, provided by you, indicating the location and size of the proposed building on the site. It is possible the construction will not affect an arroyo, however, if it does, Ms. Smith stated you will likely need a Nationwide Permit Number 26.

Ms. Smith provided a summary of Nationwide Permit Number 26 (enclosed). According to the summary, Nationwide Permit Number 26 allows discharges of dredged or fill material into headwaters and isolated waters provided the activity does not cause the loss of more than 3 acres of waters of the United States. Additionally, you must notify the ACE District Engineer for discharges causing loss of more than 1/3 acre of waters of the United States.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current

legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher